

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

YOUSSEF SALEH,

Plaintiff,

Case No. 09-cv-14562

v.

Paul D. Borman
United States District Judge

AMERICAN STEAMSHIP CO.,

Mona K. Majzoub
United States Magistrate Judge

Defendant.

ORDER GRANTING PLAINTIFF'S APPEAL OF THE MAGISTRATE JUDGE'S
SEPTEMBER 23, 2010 OPINION AND ORDER AND REFERRING THE MATTER BACK
TO THE MAGISTRATE JUDGE FOR FURTHER CONSIDERATION

This matter is before the Court on Plaintiff's appeal from Magistrate Judge Majzoub's September 23, 2010 Opinion and Order Granting Defendant's Motion to Compel Discovery (Dkt. No. 32). (Dkt. No. 36.) Defendant filed a response to Plaintiff's appeal of the Magistrate Judge's Order. (Dkt. No. 37.) For the reasons that follow, the Court refers the matter back to Magistrate Judge Majzoub for further consideration.

On July 6, 2010 Defendant filed a motion seeking to compel Plaintiff to undergo an electromyogram (EMG) study. (Dkt. No. 18.) On that same day, this Court referred the motion to Magistrate Judge Majzoub for hearing and determination. (Dkt. No. 19.) On July 16, 2010, Magistrate Judge Majzoub issued an order requiring a responsive brief to be filed on or before July 23, 2010 and indicating that the motion would be decided on the briefs. (Dkt. No. 21.) On August 2, 2010, Defendant filed a separate motion to compel answers to interrogatories (Dkt. No. 23) which

was stricken by Magistrate Judge Majzoub on August 10, 2010 for failure to conform to E.D. Mich. L.R. 7.1. (Dkt. No. 23.) Plaintiff claims that it misinterpreted this order as striking the motion to compel the EMG, Dkt. No. 18, and accordingly did not file a timely response to that motion. Plaintiff claims that Defendant must have been under a similar misunderstanding because on August 26, 2010, for reasons that are not entirely clear to the Court, Defendant filed a duplicate to its earlier-filed motion to compel. (Dkt. No. 26.)

On September 23, 2010, Magistrate Judge Majzoub issued an Order granting Defendant's original motion to compel the EMG (Dkt. No. 18), noting in her Order that Plaintiff had not filed a response. When Magistrate Judge Majzoub issued this order, she likely did not realize that the motion then under consideration had been fully briefed as the duplicate motion, Dkt. No. 26, because the Court had not yet referred Dkt. No. 26 to the Magistrate Judge. While the Magistrate Judge was deciding Dkt. No. 18, the parties had fully briefed the duplicate motion, Dkt. No. 26, which this Court referred to Magistrate Judge Majzoub on September 24, 2010. (Dkt. No. 33). On that same day Magistrate Judge Majzoub issued an order dispensing with oral argument on Dkt. No. 26 and indicating that the Court had received Plaintiff's timely response (Dkt. No. 30) and Defendant's timely reply (Dkt. No. 31) and would decide the matter on the briefs. (Dkt. No. 34.) Then, on September 24, 2010, Defendant withdrew its fully-briefed motion to compel (Dkt. No. 26) having received a favorable ruling to its earlier-filed, and seemingly unopposed, duplicate motion to compel, Dkt. No. 18. (Dkt. No. 35, Letter Withdrawing Dkt. No. 26.)

The upshot of all of this is that Magistrate Judge Majzoub was never given an opportunity to review and consider Plaintiff's substantive response to Defendant's motion to compel the EMG. While her ruling may well be the same following consideration of Plaintiff's response, in the

interests of fairness, the Court will remand the matter to Magistrate Judge Majzoub for determination of Defendant's fully briefed motion to compel, Dkt. No. 26, which Defendant concedes is a duplicate to its earlier-filed Dkt. No. 18. (*See* Dkt. No. 35, Letter Withdrawing Dkt. No. 26.)

Accordingly, the Court GRANTS Plaintiff's appeal of Magistrate Judge Majzoub's September 23, 2010 Order Granting Defendant's Motion to Compel (Dkt. No. 32) and remands the matter to the Magistrate Judge for determination of Defendant's duplicate and fully-briefed Motion to Compel, Dkt. No. 26.

IT IS SO ORDERED.

S/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: November 29, 2010

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on November 29, 2010.

S/Denise Goodine
Case Manager